IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

No. 80-797

RANDY L. HART,

Petitioner,

v.

MAYOR AND CITY COUNCIL OF BALTIMORE (COMMUNITY COLLEGE OF BALTIMORE), ET AL.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PRELIMINARY STATEMENT

This brief is submitted on behalf of the Mayor and City Council of Baltimore (Community College of Baltimore) and James Henry, Respondents, in opposition to the granting of the Writ of Certiorari sought herein. The basis for this opposition is set out as follows:

(1) The Court of Appeals in the matter herein, has not decided an important question of Federal law which has not been, but should be, settled by this Court.

(2) The Court of Appeals in the matter herein has not decided a federal question in a way in conflict with applicable decisions of this Court.

JURISDICTION

The Petitioners herein invoked the jurisdiction of the Court under 28 U.S.C., Section 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. Civil Rights Act of 1964, 42 U.S.C. 1983.
2. Equal Employment Opportunity Act of 1974, as amended, 42 U.S.C. 2000 *et seq.*
3. Rehabilitation act of 1973, 29 U.S.C. 794.
4. Rule 50 of the Federal Rules of Civil Procedure.
5. Rule 52 of the Federal Rules of Civil Procedure.
6. Seventh Amendment to the Constitution of the United States.
7. Title 29, Section 2106 of the United States Code

STATEMENT OF THE CASE

On July 29, 1978, Randy L. Hart filed an authorized Complaint in the United States District Court for the District of Maryland against the Community College of Baltimore, (CCB), the College's President (President) and James Henry (Henry), individually and in his official capacity under Title VII of the Civil Rights Acts of 1964 (42 U.S.C., Section 2000e *et seq.*,), 42 U.S.C., Section 1981, 1983, and Section 504 of the Rehabilitation Act of 1973 (29 U.S.C., Section 794), alleging that he had been denied a position as a counselor for the Veterans Upward Bound Program at CCB because of his race or handicap. *Hart v. Mayor and City Council of Baltimore (Community College*

of Baltimore, et al.,) 625 F.2d 13 (4th Cir. 1980). The District Court submitted the section 1981, 1983, and 794 claims to a jury. At the close of the evidence, the trial judge dismissed the College's president from the entire case and granted directed verdicts for the College and James Henry in his official capacity on all issues. The section 1983 claim against James Henry, the Assistant Director of the Program, in his individual capacity was reserved. The jury returned a verdict against Henry in the amount of $7,500. *Id.*

The Title VII claim was then tried to the district judge. No additional evidence was presented. The trial judge stated that he felt compelled to accept the earlier jury finding of discriminatory intent on the part of Henry. Judgment of $31,452 as back pay was then awarded against CCB and Henry on the Title VII action. *Id.*

Henry filed an Appeal arguing that the District Court committed a reversible error in failing to direct a verdict in his favor in the Section 1983 claim because the evidence was not sufficient to raise a question of fact, to be presented to the jury, that he had discriminated against Hart relative to Hart's application for the Counselor's position with the Program.

The CCB and Henry appealed from the judgment of the trial judge in the Title VII claim and argued that the ultimate responsibility for findings of fact and conclusions of law under Title VII remained with the District Court and, that the trial judge erred in deciding that he was precluded from making findings of fact independent of and inconsistent with the jury's determination and thereafter entering judgment in favor of Hart against CCB and Henry.

The Court of Appeals reviewed the record and decided that the record failed to disclose any evidence of employ-

ment discrimination on the basis of race or handicap under any of the Appellee's legal theories.

The Court of Appeals then reversed the judgment of the District Court and dismissed the Complaint.

REASONS WHY CERTIORARI SHOULD BE DENIED

1. THE COURT OF APPEALS HAS NOT DECIDED AN IMPORTANT QUESTION OF FEDERAL LAW WHICH HAS NOT BEEN, BUT SHOULD BE, SETTLED BY THIS COURT.

Petitioner has asked this Court to grant Certiorari because the Court of Appeals is precluded from entering a judgment notwithstanding the jury's verdict and dismissing the plaintiff's claim where its review of the entire record failed to disclose any evidence to support the judgment of the District Court, under any of the plaintiff's legal theories.

Rule 50(a) of the Federal Rules of Civil Procedure provides for a Motion for a directed verdict at the close of the evidence and before the case is submitted to the jury. It enables the Court to determine whether there is a question of fact to be submitted to the jury and whether any verdict other than the one directed would be erroneous as a matter of law.

Whether the evidence is sufficient to create an issue of fact for the jury is solely a question of law to be determined by the Court. *Glazer v. Glazer,* 374 F.2d 390, 400, Certiorari denied 88 S. Ct. 1001, 389 U.S. 831, 19 L. Ed. 2d 90.

If after the evidence is viewed most favorably to the Plaintiff, and the Plaintiff is given the benefit of all reasonable inferences therefrom, there is not substantial

evidence in the record from which a jury could render a verdict in favor of the Plaintiff, then it is the duty of the Court under federal law to direct a verdict in favor of the defendants, *Business Development Corp. v. United States,* 428 F.2d 451 (4th Cir.), Cert. denied, 400 U.S. 957, 91 S. Ct. 355, 27 L. Ed. 2d 265 (1970).

And it is settled that Rule 50 does not violate the Seventh Amendment's guarantee of a jury trial. *Montgomery Ward and Co. v. Duncan,* 311 U.S. 243, 85 L. Ed. 147, 61 S. Ct. 189.

Rule 50 applies only in cases tried to a jury. It does not apply to cases tried without a jury nor to those tried to the court, with an advisory jury. Hart's claim under Title VII is a non-jury claim. The appeal by the College and Henry is from the final judgment of the District Court and on all the evidence. Rule 52.

The Court of Appeals clearly indicates this in its opinion, at page 15, where it stated that the District Court committed two errors: "First, it failed to grant a directed verdict for Henry in his individual capacity when, as a matter of law, Hart had not shown a prima facie case of discrimination by Henry based on race or handicap. Second, the trial court compounded its initial error by imputing the prior jury finding of Henry's discriminatory intent to the entire search committee and CCB in the Title VII claim without making an independent review of the evidence."

The Court of Appeals made an examination of all the evidence in the record and was left with the definite and firm conviction that a mistake had been committed. Rule 52.

2. THE COURT OF APPEALS HAS NOT DECIDED A FEDERAL QUESTION IN A WAY IN CONFLICT WITH APPLICABLE DECISIONS OF THIS COURT.

The Petitioner has asked that Certiorari be granted because the Court of Appeals could not, consistent with his Fifth Amendment right to due process of law and his right to a trial by jury secured by the Seventh Amendment, reverse the judgment of the District Court and dismiss his complaint.

The authorities fully support the view taken in *Manaia v. Potomac Electric Power Company,* C.A., 4th, 1959, 268 F.2d 793, 799, Certiorari denied 80 S. Ct. 255, 361 & S. 913, 4 L. Ed. 2d 183, where the court said:

> ". . . no constitutional question arises when the Court withdraws from the jury a case in which there is no issue of fact requiring the jury's determination. The power of the Court to withdraw such cases from the jury is too firmly rooted in history and tradition for frontal attack."

The Petitioner's claim that the decision of the Court of Appeals denied him the right to due process of law as secured to him by the Fifth Amendment of the Federal Constitution should not be heard. Title 28, Section 2106 of the United States Code provides that a court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree or order of a Court lawfully brought before it for review.

Under Rule 52 of the Federal Rules of Civil Procedure, it is not accurate to say that the appellate court takes a view of the evidence that is most favorable to the appellee; that it assumes that all conflicts in the evidence were resolved in his favor; and that he must be given the benefit of all favorable inferences. All of this is true in reviewing a jury verdict. It is not true when it is findings of the court that are being reviewed. Instead, the appellate court should examine all of the evidence in the record. *U.S. v. United*

States Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525, 542, 92 L. Ed. 746 (1948).

The Petitioner's argument that the Court of Appeals did not preserve his Seventh Amendment right to a jury trial in reversing the District Court and dismissing his complaint is totally without merit. This Court has fully decided the constitutionality of Rule 50 and it is thoroughly settled that although questions of fact must be decided by the jury and may not be reexamined by the Court, the question whether there is sufficient evidence to raise a factual issue to be presented to the jury is a question of law to be decided by the Court. This Court in *Neely v. Martin K. Eby Construction Co., Inc.*, 386 U.S. 317, 18 L. Ed. 2d 75, 87 S. Ct. 1072 (1967), stated:

> "As far as the Seventh Amendment's right to jury trial is concerned, there is no greater restriction on the province of the jury when an appellate court enters judgment N.O.V. then when a trial Court does; consequently, there is no constitutional bar to an appellate court granting judgment N.O.V.."

The Seventh Amendment is not a constitutional bar to an appellate Court granting judgment notwithstanding the verdict. *Baltimore and Caroline Line, Inc. v. Redman*, 295 U.S. 654, 79 L. Ed. 1636, 55 S. Ct. 890 (1935).

CONCLUSION

For the reasons stated above it is respectfully submitted that the petition herein presents no federal question worthy of consideration by this Court and there exists no conflict with the decision of this Court therefor the petition for Certiorari should be denied.

Respectfully submitted,

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